

CAMDEN ZONING BOARD OF APPEALS
MINUTES of MEETINGS
April 29, 2010

PRESENT and VOTING: Chair: Frank Toole: Member: Leonard Lookner; and Alternate Member: Linda Norton

ABSENT: Members: Tom Laurent, Sam Smith and George Wheelwright

ALSO PRESENT: CEO Jeff Nims

The Meeting was called to Order at 5:10 pm in the Washington Street Conference Room. There are three voting members present and a 3-0 vote is required for approval. Mr. Toole read the procedure for the Public hearing.

DECLARATION OF CONFLICT

Members were asked to declare any possible conflicts of interest they might have regarding the case before them; none did.

STANDING

The Applicants stated that they have a Purchase and Sales Agreement with the Marsh Estate. The Chair found that this gives them standing to make this Application.

CHANGE IN A NONCONFORMING STRUCTURE

Request to remove two structures in the Shoreland District and replace them with a house and garage.

Sharon and Jeffrey Jordan: Map 101 Lot 11: 17 Woodland Avenue: Megunticook Lake

Mr. Nims summarized the reason this Application is before the Board: Article VI Section 6, (3) Reconstruction or Replacement requires that:

“Any nonconforming structure which is located less than the required setback from a water body,” – the existing structure is located 30’ from the lake [Megunticook]; “and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure may be reconstructed or replaced provided... that such reconstruction or replacement is in compliance with... setback requirement to the greatest practical extent as determined by the Zoning Board of Appeals in accordance with the requirements of subsection 2(b) herein.” Mr. Nims referred the Board to their packets which provide a description of the Applicant’s request to remove the existing structure and replace it with another.

Mr. Lookner asked if the CEO had seen a copy of the Purchase and Sales Agreement – he had not. The Applicant’s realtor provided a copy which was dated November 8, 2009. This was entered and made part of the record as Exhibit #1.

John Hansen, the Applicant’s Architect, presented a summary of the Application: He has just distributed two similar plans the main difference being that on one of the plans there is a triangular portion of land which is in dispute at this time. The deed is missing a description of this parcel, and there has been a long and on-going attempt to have some reconciliation with some of the abutters that are affected. It is not the Applicants’ intent to have both approved – they understand that a judgment can only be made on only one of the plans, but they would like to discuss both plans:

The version using the entire lot was labeled Exhibit #2 and the plan with the triangular portion of land removed from the lot as Exhibit #3. Mr. Hansen noted that in both scenarios the two existing structures will be removed. The 100' setback line from the water and the 60' setback line for the replacement septic system are shown on each plan.

Exhibit #2: Every attempt has been made to set back to the greatest practical extent with the bulk of the house/garage behind the 100' setback. They believe that this proposed location of the new structure will preserve more of the view for the people across the street.

Exhibit #3: Not as much of the structure (reconfigured to fit the different shape of the lot) is behind the 100' line and, sited this way, the building will impinge on the view of two back neighbors. They believe that the impact of the structure on adjacent properties is one of the factors the Board must look at.

Mr. Hansen understands that they Board cannot say which of the two plans the Applicants should put forward this evening. The Applicants prefer Exhibit #2, but it appears that there will not be a settlement of the property line dispute, and without that they cannot do that Plan.

Mr. Lookner asked if the Applicants were to receive approval for Exhibit #3 and then found the triangular portion of the lot was in the Jordan's control, would they then come back for approval of Exhibit #2. Mr. Jordan responded that if they found that the Triangular portion was *not* under their control, they would come back for approval of Exhibit #3.

Mr. Jordan explained the reason the triangular portion of the lot is in question: The original property was chopped up and bought and sold into lots between 1897 and 1928. In 1928 a measurement error was made four lots away – the property should have been measured at 135' and was measured instead at 85'. That created a 50' discrepancy with four properties in a row. In 1982 a survey was done going back only to 1928 when the mistake was made. If they had gone all the way back they would have found the mistake at that time instead of finding it now. So for the past 82 years the property owners have always thought that the property lines they thought were theirs were theirs – all running parallel to the road.

Mr. Toole suggested that they talk about the aspects of the plans that are similar or exact to go along as far as they can before the Applicants must decide which plan to select.

1. 30% Expansion Allowance and Maximum Lot Coverage:

Existing structures: Currently there are a garage and a cottage totaling 1359.9 SF within the shoreline setback. Both will be removed providing for a maximum replacement of structures within the setback totaling 1767.9 SF. Maximum lot coverage (includes buildings, decks and driveway) differs because the lot sizes differ. In addition, the reconfigured structure is different in size and shape to fit within the relevant setbacks.

Exhibit 2: The lot area is 18,221 SF allowing for 20% maximum lot coverage of 3644.2 SF. Proposed lot coverage is 3031 SF (16.6%). (Note: There was a typo in listing the lot size on the plan, but it did not affect the actual calculations which were correct.)

The total footprint of the structure within the setback is 1749 SF with the bulk of the structure behind the 100' setback.

Exhibit 3: The lot area is lot area is 14, 033 SF allowing for 20% maximum lot coverage of 2806.6 SF. Proposed lot coverage is 2456 SF (17.5%). The total footprint of the building within the shoreland is 1650 SF – 117.9 SF under the maximum allowed.

Mr. Lookner suggested that there is clearly less structure within the shoreland and it is setback to a much greater extent than the existing cottage.

With regard to the tapering of the lot, Ms. Norton confirmed that the timeframe for negotiating the line dispute was an unknown factor and that the Applicant preferred to build as shown in Exhibit # 2 and that the layout as shown will not fit into the lot as shown in Exhibit #3.

Mr. Toole: Looked at some of the criteria that will be addressed in looking at setting back “to the greatest practical extent”:

Size of the lot –information is provided for each lot and will be discussed when the plan is selected.

Slope of the land from Woodland Road down to the shoreline: Mr. Hansen stated that it is a gradual slope with perhaps a 10’ drop in elevation down the 150± length of the lot.

Septic System: Although no permits have yet been applied for, test pits have been done and a preliminary design for an 11’ x 26’ system has been drawn. Although Exhibit #3 does not show a test pit in the area where the system is proposed, the evaluator indicated to Mr. Hansen that that area is very well suited. He had originally done test pits on either side of the property assuming the structure would be in the middle. When he was informed of the land dispute he indicated the suitability of the area for systems. Mr. Toole informed him that the Board is responsible for assuring that the required State permits have been obtained. Any approval given this evening would have to be contingent upon securing the ultimate permits.

Removal of vegetation: Would construction of either home require the removal of any vegetation? Mr. Hansen said that the site has a mixture of softwood and hardwood trees – some of them old and large. In either scenario there will be a few trees that have to be removed.

Mr. Lookner asked for pictures of the site and pictures of the existing building. There is a tax card from the Town with an 11/06/2009 print date with pictures and the identification as Map 101 and Lot 11. Without objection, that card was entered as Exhibit #4. A real estate flyer, presenting 17 Woodland Avenue, Camden also with pictures of the structures and the lot, was submitted and entered, without objection, as Exhibit #5.

There were no other questions of Mr. Hansen. The Applicants were given the opportunity to comment. Mr. Jordan identified himself for the record as Jeffrey Jordan residing at 13 Francis Drive, Hamden, Maine. They wanted the Board to know that regardless of the plan they choose, they did want to illustrate the traditional shingle cottage design that will be built. Colors and materials have been chosen to blend into the background.

Proponents came forward to speak:

Raylene Farnham, 18 Woodland Road, Camden: Cross street abutter. Likes the pictures she has seen of the proposal and likes it. Her only concern is that her well, which is in her front yard, is far enough away from their septic. Otherwise she is all for it.

Charlie Jordan: It appears to him that any of the vegetation that would be disturbed will be behind the 100’ setback. No one else came forward to speak.

MOTION by Mr. Lookner seconded by Ms. Norton to close the Public Hearing.

CAMDEN ZONING BOARD of APPEALS: April 29, 2010 Final Minutes

VOTE: 3-0-0

Mr. Toole made the following findings:

Under Article VII. 3. The Zoning Boards has as one of its Powers and Duties:

“(4) Changes in Nonconforming Uses; or Lots, Structures, and Uses in Shoreland Areas

To approve, approve with conditions, or disapprove requests to change a nonconforming use...” as authorized in Article VI, Section 3 of this Ordinance;”

As noted previously by Mr. Nims, Article VI Section 6. Changes in Nonconforming Structures in Shoreland Areas (3) Reconstruction or Replacement, requires review of Section (2.) Relocation:

“(b) In determining whether the building relocation meets the setback to the greatest practical extent, the Zoning Board of Appeals shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.”

Mr. Lookner: Both plans adhere to the setbacks where possible. He asked if the Board were to approve Exhibit #2, and the triangular piece of property was found to be missing from that lot, would the house as proposed be non-conforming. Mr. Nims informed the Board that he had consulted with Town Attorney Bill Kelly who prefers that the Board approve only one Plan. If the current information is shown on Exhibit #2, then that is the Plan that should be reviewed. If the lot ends up being that shown on Exhibit #3, then the Applicants can come back for an amendment and use that Plan – or vice versa. Approve Exhibit #3 if that is the correct information and come back if that information changes - Exhibit #3 does appear to be the Plan using currently correct information.

Ms. Norton: The Plan as shown on Exhibit #3 has a harder time fitting the structure within the setbacks to the same extent as Exhibit #2. All the side setbacks are met on #2 and more of the structure is out of the 100' setback. The Applicants can ask the Board to review Exhibit #3 in the hope that the boundary issue can be resolved, and they can obtain amended approval using the alternate plan in the future. Either way, the structure closest to the water is moved back further, and the building as described will look better from all vantage points. The existing buildings are outside the side-yard setbacks on both sides – the proposed building is within. The new septic system is a plus, and the State of Maine will ensure that there are no adverse effects from that system in their permitting. We should approve what we know you have with the hope to expand.

Mr. Hansen informed the Board that the Applicants will go forward with Exhibit #3. He also informed them that all the wells in the neighborhood were located on a plan that was used to site the septic assuring required setbacks were met wherever it was located.

Review of Exhibit #3: Site Plan for Jeffrey Jordan dated April 29, 2010:

MOTION by Mr. Toole seconded by Ms. Norton that the Plan as presented calls for removal of two existing nonconforming structures and replacing them with the result that the new structure is located further back from Megunticook Lake.

VOTE: 3-0-0

MOTION by Mr. Toole seconded by Mr. Lookner that there has been testimony here indicating that the slope of the land is not severe so that there is little potential for erosion.

MOTION by Mr. Toole seconded by Mr. Lookner that the Board Find that there is a proposed new septic system and the location of that system is beyond the 60' setback.
VOTE: 3-0-0

Mr. Toole read from (2) (b) continued: "When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Zoning Board of Appeals shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows: ..."

MOTION by Mr. Toole seconded by Ms. Norton to Find as a Fact that the Applicants have been made aware of the requirement regarding replanting of vegetation as described in Article VI Section 6 (2)(b)(ii) including on the site where the existing structure is removed and have agreed to do so.
VOTE: 3-0-0

MOTION by Mr. Lookner seconded by Ms. Norton to Find as a Fact that the building plans as presented on Exhibit #3 will meet the setback requirements to the greatest possible extent.
VOTE: 3-0-0

MOTION by Mr. Toole seconded by Mr. Lookner to approve this Application subject to the approval of the proposed septic system under the ultimate rules and regulations.
VOTE: 3-0-0

MINUTES:

The review of the Minutes of March 15, 2010 was deferred until more members were present.

OTHER BUSINESS:

The CEO informed the members of the Board that he would be retiring this fall and that the new CEO will hopefully be on Board for a month prior to his leaving in September to train with him. He asked the members of the Board if they would be interested in participating in a "Mock review" to be used for the purposes of illustrating to the new CEO what his role would be with regard to ZBA reviews. The three in attendance agreed they would be glad to participate.

There being no further business before the Board they adjourned at 5:30 pm.

Respectfully Submitted,

Jeanne Hollingsworth, Recording Secretary